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Retail Banking Market investigation
Competition and Markets Authority
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Dear Sir/Madam,

Which? welcomes the opportunity to provide feedback on the CMA's draft Retail Banking Market Investigation Order 2017, and raise a number of issues that we have previously discussed during the inquiry. While we acknowledge that the high-level intent and scope of the package of remedies will not be amended, we would like to make comments on the way in which the Order will give effect to these remedies.

The Monthly Maximum Charge (MMC)

Which? does not believe that the CMA's proposal to require personal current account providers to introduce a MMC covering all unarranged overdraft charges will be effective in addressing the detriment that the CMA identified.

While we acknowledge that the overall intention of this remedy will not be amended, given the specifications laid out in the Order, we would like to raise some concerns about how the MMC will apply in practice.

Paragraph 28.5.1 of the Order defines a 'month' as 'the provider's monthly charging period' for the purposes of the MMC. In practice, this means that consumers could face overall charge levels which greatly exceed the level of the defined MMC, and could be as high as double, in a given 30-day period. This could even occur within a given *calendar month* if the bank's monthly charging period does not align with calendar months. This is likely to be particularly confusing for consumers.

In July 2016, Which? reviewed the unarranged overdraft charges levied by the major high street banks, and calculated the cost of borrowing £100 for 28 days. We found that charges at some high street banks in this scenario were as much as £90, up to four times higher than the maximum charges of £22.40 on a payday loan over the same period. However, we also noted that the banks' charges could be even higher if the money is borrowed over two bank monthly charging periods, because the maximum charge relates to the bank's monthly charging period and not the borrowing period.

For example, a bank may state that it charges £5 per day for the use of an unarranged overdraft, and that its Monthly Maximum Charge is £80. If the monthly charging period restarts on the 1st day of the month (and the MMC 'resets'), a customer who uses an unarranged overdraft from 17

January to 16 February could be charged £75 for January, plus a further £80 in February because the limit would be reset. The customer would only have used the unarranged overdraft for 31 days, the equivalent of one month, but could face £155 in charges, almost double the MMC stated by the bank. If the monthly charging period restarts on the 16th of the month (and the MMC 'resets'), then a customer who uses an unarranged overdraft from 1 January to 31 January would also face £75 for the first 15 days' usage, and £80 for the next 16 days – again a total of £155. Which? is concerned that the customer's experience of using an unarranged overdraft for a month might result in them paying far more than they expect to, as a result of the CMA Order defining a month as the provider's monthly charging period.

Which? is not the only organisation to draw attention to the problems that arise from the use of 'month' without further clarity. The CMA procured research from Research Works who, in slide 52 of their *Presentation of qualitative research findings*¹ said on this point:

'MONTHLY: Clearest and shortest option – assumed to indicate 'calendar month', and; 'The bank needs to clarify what 'monthly' means'

This clearly recognises the issue with leaving 'month' as a definition open to interpretation. Which? is concerned that the CMA's approach in this Order simply adopts the relevant bank's perspective of its chosen charging month period with little regard to the effect on consumers.

Which? supports a more consumer-based perspective to deliver a clearer definition of 'month' for the purposes of the MMC, such as 'in any 30 day period'. Regardless, we would expect explicit consideration to be given by the CMA as to how MMC calculation is communicated to consumers, in line with the point raised in the CMA's own research.

Grace periods

Which? asked the CMA to consider how banks can use additional prompts and control mechanisms to assist customers to manage their accounts. We were therefore pleased to see remedies requiring banks to alert customers when they are going into unarranged overdraft, and to give customers grace periods in order to take action to avoid or mitigate the charges resulting from unarranged overdraft use.

This was a key element of the CMA's remedies on overdraft charges, but the Order appears to include no explicit requirements on banks in relation to the provision of grace periods. Instead it simply focuses on banks alerting consumers to what grace periods they offer (if any) and the timeliness of provision of that information, as opposed to introducing specific grace period requirements.

Although we recognise that the FCA has been asked to consider the potential role for, and design of, grace periods, the CMA has missed an opportunity to deliver a key change for consumers by omitting from the Order any requirements on banks to provide grace periods. It also appears to contradict the CMA's final report, which said that the CMA would be 'requiring banks to

¹ <https://assets.publishing.service.gov.uk/media/5800de6ced915d4b75000000/research-works-presentation-of-qualitative-research-findings.pdf>



offer...grace periods' as part of its remedies. In practice, this Order does not introduce this measure, and we now expect the FCA to deliver the requirements on banks to provide grace periods.

Consumer challenge during the development of Open APIs

It is good that the Open API requirements in the Order recognise the need for consumer representation during the development of the open API arrangements. However, there is a question as to whether simply having a consumer representative on the 'Implementation Entity Steering Group' will ensure that there is sufficient challenge and testing in terms of potential effects on consumers. Lone consumer representatives on such groups can face significant obstacles in terms of providing for effective challenge and testing – and are not a substitute for effective consumer testing and engagement. We have previously presented our views on the role that Consumer Challenge Groups could play in this type of context to the CMA. The CMA should consider the potential need for further, ongoing consumer challenge and testing.

If you or your team have any questions about this, please do not hesitate to contact me.

Yours sincerely

Vickie Sheriff
Director of Campaigns and Communications